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SUBJECT: 62ND UNGA: GUIDANCE REQUEST - FIFTH COMMITTEE'S REVIEW OF CONDITIONS OF SERVICE FOR JUDGES

¶1. (U) This is an guidance request - see para 12.

¶2. (U) Summary: The Fifth Committee is soon to consider the conditions of service and compensation for judges of the ICJ and other Tribunals i.e. ICTY and ICTR. Though some technical matters relating to pension schemes, education benefits and incentives to retain staff will be discussed, the central issue relates to a decision to bring the system for determining judges salary in line with the UN Common System. End summary.

¶3. (U) In response to the SYG's Report A/C.5/59/2, the General Assembly in 2005, as a temporary measure, raised the annual salary of the members of the ICJ and the judges and ad litem judges of the Tribunals by 6.3 percent from \$160,000 to \$170,080, effective January 1, 2005. This figure was inclusive of post adjustments. General Assembly Resolution 59/282 Section III, also maintained the floor/ceiling mechanism, established for some duty locations, including The Hague, in 1987 by the International Civil Service Commission (ICSC). The floor/ceiling mechanism was intended to address salary disparities caused by currency fluctuations. Under the system established in 2005, judges serving in The Hague receive a net annual remuneration of \$217,851, while those serving in Arusha, who do not have the benefit of the floor/ceiling mechanism, receive an annual remuneration of \$170,080.

¶4. (U) Resolution 59/282 also requested a comprehensive report from the SYG reviewing the conditions of service and remuneration of the judges of the ICJ and other Tribunals. In response, the SYG submitted report A/61/554 requesting the GA approve \$170,080 (the current net remuneration) as the annual base salary for the judges, and additionally the post adjustment multiplier at 50.2 for The Hague and 38.6 for Arusha, while eliminating the floor/ceiling mechanism for The Hague. The SYG's proposal would bring the system for compensating the judges of the ICJ and other Tribunals back in line with the rest of the UN Common System. However, because the SYG's proposal started with the special \$170,080 base salary, the annual remuneration for judges in The Hague would rise some \$35,000 to \$255,460 and some \$65,000 to \$235,731 in Arusha.

¶5. (U) In its report A/61/612, the Advisory Committee on Administrative and Budgetary Questions (ACABQ) was critical of the proposal to utilize the \$170,080 as the base salary. The ACABQ said that using the current net remuneration (\$170,080) unduly inflates the remuneration calculated under the proposed post adjustment system. The ACABQ recommended that the GA protect the judge's current level of remuneration and that the SYG present to the GA at its 62nd session a new proposal for adjusting remuneration for future judges.

¶6. (U) After extensive discussion, the Fifth Committee adopted GA Resolution 61/262 phasing out the temporary

compensation regime and aligning the compensation regime adopted in 2005 for members of the court with the common system regime for compensating international civil servants, as proposed by the SYG. However, responding to the ACABQ's criticism of utilizing the \$170,080, Resolution 61/262 set the annual base salary of the judges of the ICJ and other Tribunals at \$133,500 per annum - rather than \$170,080, with corresponding post-adjustment. In bringing the compensation regime back in line with the UN Common System, the post-adjustment system also removed the floor/ceiling mechanism.

¶ 17. (U) Article 32, paragraph 5, of the Statute of the ICJ states that "salaries, allowances, and compensation (of the judges) shall be fixed by the General Assembly. They may not be decreased during the term of office." Consistent with this provision, the resolution maintained the level of annual salary approved in 59/282 for current members of the ICJ, ICTY and ICTR for the duration of their current term of office, or until such a time as this amount is overtaken by the application of the revised annual salary system. At the same time, the GA determined to treat ICTR judges serving in Arusha comparable to the current judges of the ICJ, satisfying G-77 concerns and resulting in roughly a \$15,000 increase in overall annual compensation for each ICTR judge effective 1 January 2007.

¶ 18. (U) The Fifth Committee approved the text of resolution 61/262 on March 29, 2007. On April 3, 2007, the day before the resolution was to be adopted by the General Assembly, ICJ President Rosalyn Higgins wrote to the PGA, requesting that the "General Assembly postpone the approval of any new system, subject to submission by the Secretary-General of new proposals as recommended by the ACABQ." Many delegations felt President Higgins' letter encroached upon the General Assembly's authority, both generally under the Charter and

specifically under the Statute of the Court, to set compensation for the judges. See, para 6. The resolution was adopted by consensus by the Plenary.

¶ 19. (U) President Higgins argued then and continues to argue that the GA resolution, by lowering the salary of new incoming judges, violates a general principle of equality, and should therefore be overturned. There is no requirement in the Charter or the Statute of the Court for equal treatment of new judges in regard to such compensation. Indeed, if there were, it would negate the express authority of the GA to fix such compensation. Moreover, Article 32(6) of the Statute of the Court, requiring that new judges take part in decisions of the ICJ on terms of "complete equality" with their colleagues, requires equality of status, not compensation.

¶ 10. (SBU) Member States are faced with extraordinary and unacceptable growth in the UN budget for the 2008-2009 biennium. The current, temporary, base salary for ICJ judges (\$170,080) far exceeds the current base salary for an Under-Secretary-General (\$120,429 single/\$133,818 dependent). The U.S. is in the forefront to reduce costs and restrain increases to the budget. This is one of few examples where Member States took a step to reduce inflated costs, generated by the temporary, overly generous system previously in place. USUN is aware that "certain members" of the ICJ believe statements made by U.S. representatives in the Fifth Committee reflect disrespect and hostility for members of the Court and their work. Such allegations are unfair and appear to be prompted by the refusal of USUN to defer to the positions of those judges in the question of compensation. Notably the position of USUN on this matter was developed in consultation with the Department. The objections from "certain members" of the ICJ to the position of USUN on this issue underscore the dilemma USUN faces in trying to exercise fiscal discipline. As we understand, there is little support in the Fifth Committee for overturning the decision of the GA.

¶ 11. (U) Department may wish to take into account the

observations and recommendations of the ACABQ as contained in its report A/62/7/Add.36. ACABQ is critical proposals to depart from the common system approach for determining salaries of the judges of the ICJ and other Tribunals and with the use of a currency other than United States Dollars. The ACABQ is concerned that these departures from current practices have implications for other arrangements.

¶12. (U) Action Request. USUN seeks guidance from the Department on how to proceed in this matter.

KHALILZAD